HC-KAR
NC: 2026:KHC:52797-DB
CEA No. 1 of 2026
CNR: KAHC010014712026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE R DEVDAS

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CENTRAL EXCISE APPEAL NO. 1 OF 2026

BETWEEN:

THE COMMISSIONER OF CENTRAL TAX
BENGALURU NORTH,
GST BANGALORE NORTH COMMISSIONERATE,
NO.59, HMT BHAVAN, GANGANAGAR,
BELLARY ROAD,
BANGALORE - 560 032.

...APPELLANT

(BY SRI. UNNIKRISHNAN M., CGSPC)

AND:

SPOTON LOGISTICS PRIVATE LIMITED,
(EARLIER KNOWN AS STARTREK LOGISTICS PRIVATE LIMITED)
NO.23/24, THANAVAN, 1ST FLOOR,
INFANTRY ROAD,
BENGALURU -560 001.
KARNATAKA.

...RESPONDENT

(BY SRI. ONKAR SHARMA., ADVOCATE FOR
SRI. V. J. ACHALANAND, ADVOCATE)

THIS CEA IS FILED UNDER SECTION 35G OF THE CENTRAL EXCISE ACT PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE HON'BLE CESTAT, BANGALORE IN FINAL ORDER NO.20504-20505/2025 DATED 23.04.2025 AND ETC.,

THIS CENTRAL EXCISE APPEAL HAVING BEEN HEARD AND RESERVED ON 20.08.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THIS COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE R DEVDAS
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE R DEVDAS)

Since question of maintainability of this appeal filed under Section 35G of Central Excise Act, 1944, is raised by the learned Counsel for the respondent, the matter is taken up for consideration accordingly.

2. It is the contention of the learned Counsel for the respondent that this appeal filed under Section 35G of Central Excise Act, 1944, (hereinafter referred to as 'Act,

1944' for short) is not maintainable and the same is maintainable before the Hon'ble Supreme Court under Section 35L of the Act, 1944. In order to buttress his contention, learned Counsel for the respondent submitted that the Hon'ble Supreme Court has considered and laid at rest the issue in ***M/S. ALUPRO BUILDING SYSTEMS PVT. LTD. VS. COMMISSIONER OF CENTRAL EXCISE, BANGALORE-II***[1]. He submitted that Clause (ii) of sub-section (1) of Section 35L of the Act, 1944, makes it clear that an appeal shall lie to the Supreme Court from any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relationship to the rate of duty of excise or to the value of goods for purposes of assessment. Further, sub-section (2) therein clarifies that for the purpose Chapter VI-A, the determination of any question having a relation to the rate of duty shall include the determination of taxability or

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excisability of goods for the purpose of assessment. For that purpose, the Hon'ble Supreme Court has raised the issue: "Whether the High Court had the jurisdiction under Section 35G of the Act to decide the excisability of the Aluminum Composite Panels and whether cutting, grooving and routing of the Aluminum Composite Panels would amount to manufacture under Section 2(f) of the Act, 1944?"

3. It is contended that the Hon'ble Supreme Court, while answering the said issues, has held that an appeal under Section 35G is excluded where the order of the Tribunal concerns a question having a relation to the rate of duty or the value of goods for assessment. The determination whether goods are excisable is a necessary precursor to assessment and is directly and proximately connected with the rate of duty. Section 35L read with its clarificatory sub-section (2), channels such disputes to the Supreme Court and confirms that excisability falls within the excluded class of questions. Therefore, it was held that

the High Court lacked jurisdiction to decide the question of excisability and the proper forum was the Supreme Court.

4. Applying the test, learned Counsel for the respondent would contend that the Customs, Excise and Service Tax Appellate Tribunal (for short, 'CESTAT') has gone into the question whether the respondent is engaged in providing services that would fall under the category of 'Goods Transport Agency' service under Section 65B and if they would be liable to pay service tax under the Reverse Charge Mechanism. For that purpose, the CESTAT has considered whether the respondent provides service classifiable under the head 'Goods Transport Agency' service or as contended by the respondent the charges under the head 'line haul and pick-up and delivery' do not attract service tax. It is therefore clear that the issue decided by CESTAT clearly touches upon the determination of a question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment and

therefore, the same falls within the ‘exclusion’ provided in Section 35G and clause (ii) of sub-section (1) of Section 35L as clarified in sub-section (2) of Section 35L, within the purview of the Hon'ble Supreme Court.

5. Per contra, Sri N.Unnikrishnan, learned Central Government Senior Panel Counsel for the appellant submitted that there is no issue touching upon anything so as to determine any question having a relation to the rate of duty of excise in the present case. What has been considered by CESTAT is only whether the respondent is classifiable under the head ‘Goods and Transport Agency’ service under Section 65B(26) and since it is found that the respondent cannot be considered as falling under the category of Goods and ‘Transport Agency’ service as they do not satisfy the two criteria requisite for falling under the same namely, they should provide service in relation to transport or goods by road and issue consignment note, by whatever name called, such a decision has been

questioned before this Court. The issue therefore clearly falls within the confines of Section 35G of the Act and the appeal is therefore maintainable before this Court.

6. Heard the learned Counsel for the respondent, learned Counsel for the appellant and perused the judgments cited by the learned Counsels, for deciding the issue regarding maintainability of this appeal.

7. In ***M/S. ALUPRO BUILDING SYSTEMS PVT. LTD.***[1], the Hon'ble Supreme Court, while analyzing the scope and purport of Sections 35G and 35L of the Act, 1944, has held that a plain reading of sub-section (1) of Section 35G would reveal that an appeal lies to the High Court from an order passed by the Appellate Tribunal where it does not relate to the determination of any question having a relation to the rate of excise duty or to the value of goods. In other words, the provision envisages a clear bar on appeals from an order not being an order relating to the

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determination of any question having a relation to the rate of excise duty or the value of goods. At the same time, sub-section (1) (b) of Section 35L provides that an appeal from an order passed by the Appellate Tribunal relating to the determination of any question having a relationship to the rate of excise duty or to the value of goods for the purpose of assessment lie to the Supreme Court. Further, sub-section (2) of Section 35L provides that questions having relation to the 'rate of duty' includes the questions on determination of taxability or excisability of goods for the purpose of assessment.

8. Further, the Hon'ble Supreme Court has held that the word "any" employed in Section 35G gives the exclusion as regards the jurisdiction a wide sweep, indicating that the question referred to therein is not limited to a specific question of rate of excise duty or value of goods. In other words, even peripheral questions touching a question pertaining to rate or valuation can

attract such exclusion. Further, the conscious views of the prefatory phrase "among other things" also serve to communicate that these are not the only exclusions and are merely illustrative of a broader category of rate of duty and valuation. It was further held that the expression "for purposes of assessment" also deserves some attention. It qualifies and governs both the preceding links of the exclusion i.e., the rate of excise duty and the value of goods. In other words, the exclusion is not triggered by every question touching upon the rate of duty or value of goods in the abstract. The question must have a relation to rate or value specifically in the context of assessment. It was also held that another good reason to hold the aforesaid is that decision on such an issue would not only have ramifications *in personam* but also *in rem*.

9. It is necessary to notice that the Hon'ble Supreme Court has considered many earlier judgments of the Supreme Court, including ***NAVIN CHEMICALS MANUFACTURING & TRADING CO. LTD. VS. COLLECTOR***

OF CUSTOMS[2], where it was held that a dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Therefore, it is clear that the Apex Court noted that the classification of goods under the tariff for the purpose of determining the rate of duty would be a question having relation to the rate of duty. It has been held that what Section 35G excludes, Section 35L picks up. The exclusion in Section 35G is, therefore, meaningful only when read along with Section 35L. The two provisions are not independent of each other. They are interdependent and together they constitute a complete, exhaustive, and mutually exclusive appellate scheme under the Act, 1944.

10. Looking at the facts therein, the Hon'ble Supreme Court found that the issue before the High Court

[2] (1993) 4 SCC 320

was whether the activity of cutting and routing or grooving of Aluminum Composite Panels would bring into existence new product subjecting it to payment of excise duty. Accordingly, it was held that the only determination made by the Tribunal is with regard to the excisability of the goods in question. Since what was done by the Tribunal is the determination of the levy of duty under the Act, 1944, it was held that the Revenue ought to have preferred an appeal before the Supreme Court under Section 35L of the Act.

11. This Court is therefore required to consider from the facts of the present case and the *lis* decided by CESTAT as to whether the impugned order relates to, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment?

12. The question before CESTAT, was whether the respondent falls under the head 'Goods Transport Agency'

service. The CESTAT, for the purpose has considered the show-cause notice issued by the competent authority where it is alleged that the services rendered by the respondent would fall under the category of 'Goods Transport Agency' service as there are payments made to the respondent under the notes line haul charges and pick-up and delivery charges and consignment notes issued by the contractor. The nature of the work undertaken by the respondent and the wordings of the agreement have been analyzed by CESTAT and having regard to the agreement, it was determined that the respondent does not satisfy the two criteria requisite for falling under the head 'Goods Transport Agency' service i.e. he does not provide service in relation to transport or goods by road and there are no consignment notes issued to them, by whatever name called.

13. It is therefore clear that the issue decided by CESTAT and now sought to be questioned in this appeal

pertains to determination of a question having a relation to excisability and to the value of the services rendered by the respondent. The issue is one of classification and excisability. The issue squarely falls within the bracketed portion of sub-section (1) of Section 35G and sub-clause (b) of sub-section (1) of Section 35L and sub-section (2) of Section 35L of the Act, 1944. The appeal is therefore not maintainable before this Court. The appellant will have to approach the Hon'ble Supreme Court invoking Section 35L of the Act, 1944.

14. The issue raised is accordingly answered.

15. The Appeal is accordingly ***dismissed***, while reserving liberty to the appellant to approach the Hon'ble Supreme Court, in accordance with law.

16. Pending Interlocutory Application(s), if any, stand disposed of.

17. Registry to return the original documents or certified copies, if any, to the appellant while retaining a copy for the file.

Sd/-
(R DEVDAS)
JUDGE

Sd/-
(DR.K.MANMADHA RAO)
JUDGE

KLY
CT: JL